

§ 795.9

are lacking or too scarce to be recognized the percentage share of the value of the stock shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value, including the rights and privileges of the various stock issues.

(Title I, Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86, 87 Stat. 221 (7 U.S.C. 1307) and under Title I, Rice Production Act of 1975, Pub. L. 94-214, 90 Stat. 181 (7 U.S.C. 428c note), and Pub. L. 95-156, 91 Stat. 1264 (7 U.S.C. 1307 note, 7 U.S.C. 1307, 7 U.S.C. 1441))

[43 FR 9784, Mar. 10, 1978, as amended at 45 FR 10311, Feb. 15, 1980; 45 FR 11795, Feb. 22, 1980]

§ 795.9 Estate or trust.

(a) An estate or irrevocable trust shall be considered as one person except that, where two or more estates or irrevocable trusts have common beneficiaries or heirs (including spouses and minor children) with more than a 50-percent interest, all such estates or irrevocable trusts shall be considered as one person.

(b) An individual heir of an estate or beneficiary of a trust may be considered as a separate person to the extent that such heir or beneficiary is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3, except that an estate or irrevocable trust which has a sole heir or beneficiary shall not be considered as a separate person from such heir or beneficiary.

(c) Where an irrevocable trust or an estate is a producer on a farm and one or more of the beneficiaries or heirs of such trust or estate are minor children, the minor children's pro rata share of the program payments to the trust or estate shall be attributed to the parent of the minor children except as otherwise provided in § 795.12.

(d) A revocable trust shall not be considered as a separate person from the grantor.

§ 795.10 Club, society, fraternal or religious organization.

Each individual club, society, fraternal or religious organization may be considered as a separate person to the extent that each such club, society,

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fraternal or religious organization is engaged in the production of crops as a separate producer and otherwise meets the requirements of § 795.3.

§ 795.11 Husband and wife.

With respect to the 1988 crop year, a husband and wife shall be considered to be one person except that such individuals who, prior to their marriage, were separately engaged in unrelated farming operations will be determined to be separate persons with respect to such farming operations so long as the operations remain separate and distinct from any farming operation conducted by the other spouse if such individuals have executed a Contract to Participate in the 1988 Price Support and Production Adjustment Programs by April 15, 1988. Such individuals must file a form FSA-561 with the county committee for each such farming operation by July 8, 1988, if they desire to be considered as separate persons under this section.

[53 FR 21410, June 8, 1988]

§ 795.12 Minor children.

(a) A minor child and his parents or guardian (or other person responsible for him) shall be considered as one person, except that the minor child may be considered as a separate person if such minor child is a producer on a farm in which the parents or guardian or other person responsible for him (including any entity in which the parents or guardian or other person responsible for him has a substantial interest, i.e., more than a 20-percent interest) takes no part in the operation of the farm (including any activities as a custom farmer) and owns no interest in the farm or allotment or in any portion of the production on the farm, and if such minor child:

(1) Is represented by a court-appointed guardian who is required by law to make a separate accounting for the minor and ownership of the farm is vested in the minor, or

(2) Has established and maintains a different household from his parents or guardian and personally carries out the actual farming operations on the farm for which there is a separate accounting, or

(3) Has a farming operation resulting from his being the beneficiary of an irrevocable trust and ownership of the property is vested in the trust or the minor.

(b) A person shall be considered a minor until he reaches 18 years of age. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor for purposes of applying the regulations.

§ 795.13 Other cases.

Where the county committee is unable to determine whether certain individuals or legal entities involved in the production of a commodity are to be treated as one person or separate persons, all the facts regarding the arrangement under which the commodity is produced shall be submitted to the State committee for decision. Where the State committee is unable to determine whether such individuals or legal entities are to be treated as one person or separate persons, all the facts regarding the arrangement under which the farming operation is conducted shall be submitted to the Deputy Administrator for decision.

§ 795.14 Changes in farming operations.

(a) Subject to the provisions of this part, a person may exercise his or her right heretofore existing under law, to divide, sell, transfer, rent, or lease his or her property if such division, sale, transfer, rental arrangement, or lease is legally binding as between the parties thereto. However, any document representing a division, sale, transfer, rental arrangement, or lease which is fictitious or not legally binding as between the parties thereto shall be considered to be for the purpose of evading the payment limitation and shall be disregarded for the purpose of applying the payment limitation. Any change in farming operations that would otherwise serve to increase the number of persons for application of the payment limitation must be bona fide and substantive.

(b) A substantive change includes, for example, a substantial increase or decrease in the size of the farm by purchase, sale, or lease; a substantial in-

crease or decrease in the size of allotment by purchase, sale, or lease; a change from a cash lease to a share lease or vice versa; and dissolution of an entity such as a corporation or partnership.

(c) Examples of the types of changes that would not be considered as substantive are the following:

Example 1. A corporation is owned equally by four shareholders. The corporation owns land, buildings, and equipment and in the prior year carried out substantial farming operations. Three of the shareholders propose forming a partnership which they would own equally. The partnership would cash lease land and equipment from the corporation with the objective of having the three partners considered as separate persons for purposes of applying the payment limitation under the provisions of § 795.7 of the regulations.

The formation of such a partnership and the leasing of land from a corporation in which they hold a major interest would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the partners would be limited to a single payment limitation.

Example 2. Three individuals each have individual farming operations which, if continued unchanged, would permit them to have a total of three payment limitations.

The three individuals propose forming a corporation which they would own equally. The corporation would then cash lease a portion of the farmland owned and previously operated by the individuals with the objective of having the corporation considered as a separate person for purposes of applying the payment limitation under the provisions of § 795.8 of the regulations. The formation of such a corporation and the leasing of land from the stockholders would not constitute a substantive and bona fide change in operations. Therefore, the corporation and the three individuals would be limited to three payment limitations.

§ 795.15 Determining whether agreement is a share lease or a cash lease.

(a) *Cash lease.* If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(b) *Share lease.* If a rental agreement contains provisions that require the payment of rent on the basis of the